

**IN THE UNITED STATES PATENT AND  
TRADEMARK OFFICE BEFORE THE TRADEMARK  
TRIAL AND APPEAL BOARD**

78381894

Roman Bratasiuk,  
Petitioner,

vs.

Clarendon Hills Distribution (S) Pte Ltd.,  
Respondent.

)  
) **PETITION FOR CANCELLATION**  
)  
) Cancellation No. \_\_\_\_\_  
)  
) Registration No. 3,034,382  
) Date of Issue: December 27, 2005  
)  
)  
)

Petitioner, Roman Bratasiuk, an individual and owner of Clarendon Hills Nominees Pty Ltd., located at 363 The Parade, Kensington Park, South Australia 5065, Australia, believes that he has been, and continues to be, damaged by Registration No. 3,034,382 and hereby Petitions to cancel same.

Description of Respondent's Registration: Filed on March 10, 2004 for the mark "CLARENDON HILLS" on the Principal Register, in Class 33 for "wine"; claiming first use on January 1, 1991.

To the best of Petitioner's knowledge, the name and address of the Respondent are as follows: Clarendon Hills Distribution (S) Pte Ltd., 37 Jalan Pemimpin, #07-05 Union Industrial Building, Singapore, SINGAPORE 577177.

As grounds for the Petition, it is alleged that:

**(Prior Adoption and Use of the Mark)**

1. Section 2(d) of the Act, 15 U.S.C. § 1052(d): Since at least as early as 1996, Petitioner has used, and is now using the mark "CLARENDON HILLS" in U.S. commerce connection with the sale of his wines. Said use has been valid and continuous since said date of



first use and has not been abandoned. Said mark of Petitioner is symbolic of extensive goodwill and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the goods (as recited in Respondent's registration) of the respective parties, it is alleged that Respondent's registered mark so resembles Petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, and/or to cause mistake and/or deceive.

**(False and Misleading Connection with Petitioner)**

2. Section 2(d) of the Act, 15 U.S.C. § 1052(d): Respondent's registration of the "CLARENDON HILLS" mark falsely suggests a connection with Petitioner, Petitioner's Clarendon Hills Winery and Petitioner's wine produced therefrom.

**(False Claim of Ownership)**

3. Respondent is not (and was not, at the time of filing its application for registration) the rightful owner of the registered mark.

**(False Representation of Bona Fide Use by Respondent)**

4. There was no bona fide use in commerce of the "CLARENDON HILLS" mark by Respondent in connection with the "sale of goods produced and owned by Respondent" prior to filing the use-based application for registration of Petitioner's mark under Section 1(a) of the Act, 15 U.S.C. § 1051(a).

**(Fraudulent Registration of the Mark)**

5. Respondent's registration was obtained fraudulently in that in the formal application papers filed by Respondent on March 10, 2004 under notice of 18 U.S.C. § 1001, it was stated that (i) respondent was the owner and, thus, applicant of the registration, (ii) Respondent's first

use of the mark anywhere was “at least as early as 01/01/1991”, (ii) Respondent’s first use in U.S. commerce was “at least as early as 10/01/1995”, and (iv) “[t]he mark [became] distinctive of the goods/services through applicant’s substantially exclusive and continuous use in commerce for at least five years immediately before the date of [the application].” Said statements were false in that the true facts are that:

- a. As stated in Para. 1 above, Petitioner adopted and began using the “CLARENDON HILLS” mark in the U.S. in connection with the sale of his wines since at least as early as 1996 and, hence, is the owner of all rights, title and interest thereto.
- b. In or about 2003, Petitioner granted Respondent the right to distribute his wines in the United States. Respondent’s first shipment of Petitioner’s wines, bearing his “CLARENDON HILLS” mark, to the United States was not until 2004.
- c. In early 2004, Petitioner was informed by Respondent, that Respondent intended to file an application to register the “CLARENDON HILLS” mark in the U.S. Patent and Trademark Office. Petitioner was lead to believe, and thus believed, that the application to register his mark was being filed on his behalf. Petitioner thus assisted Respondent in the registration of the mark. Since Petitioner was and remains the true owner of the mark, under 15 U.S.C. § 1051(b), Respondent should not have been named the applicant on the formal application papers.
- d. Prior to obtaining Petitioner’s authorization to distribute his wines in the United States in 2003, on information and belief, Respondent had never used the “CLARENDON HILLS” mark in the U.S. in connection with the sale of any goods; particularly, wines. Further, as stated in Para. 5.b. above, Respondent’s first shipment of Petitioner’s wines, bearing his “CLARENDON HILLS” mark, to the United States

was not until 2004. Thus, contrary to Respondent's statement in the application, Respondent's first use of the "CLARENDON HILLS" mark (in connection with the distribution of Petitioner's wines) anywhere was, at the earliest, in 2004. Similarly, Respondent's first use of the "CLARENDON HILLS" mark (in connection with the distribution of Petitioner's wines) in U.S. commerce was, at the earliest, in 2004.

- e. Further, the "CLARENDON HILLS" mark became distinctive of the goods associated therewith, i.e. Petitioner's wines, through "Petitioner's use" in commerce for at least five years before the filing date of the application, not, as alleged by Respondent, "Respondent's use". As stated in Para. 5.b. above, Respondent's first shipment of Petitioner's wines, bearing his "CLARENDON HILLS" mark, to the United States was not until 2004. The application to register the "CLARENDON HILLS" mark was filed on March 10, 2004. Thus, Respondent's use of the "CLARENDON HILLS" mark in U.S. commerce in connection with the distribution of Petitioner's wines prior to filing the application was, at most, a few months.

Said false statements were made by an authorized agent of Respondent with the knowledge and belief that said statements were false. Said false statements were made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant said registration to said Respondent. Petitioner was, and continues to be, damaged by said false statements, since the registration issued in reliance thereon, in that Petitioner has been refused registration of the "CLARENDON HILLS" mark (Application No. 78/959,167, filed on August 24, 2006), and, since Petitioner has continuously used the "CLARENDON HILLS" mark in U.S. commerce in connection with the sale of his wines for at

Petition For Cancellation

least twelve (12) years (8 years prior to the filing date of Respondent's application) and since Respondent's distribution rights will terminate in the near future, Petitioner's continued and legal use of said mark will be impaired by the continued registration of said mark by Respondent.

WHEREFORE, Petitioner prays that Registration No. 3,034,382 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted

Francis Law Group

By 

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Reg. No. 38,884

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Roman Bratasiuk,  
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)  
) **Proof of Service**  
)  
) Cancellation No. \_\_\_\_\_  
)  
) Registration No. 3,034,382  
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3.) Clarendon Hills Distribution (S) Pte Ltd's Attorney of Record, Wayne B. Cooper, was also served with the Petition on June 4, 2008 by depositing a copy of the Petition in an envelope and depositing the envelope with the United States Postal Service as "First Class Mail" with the postage fully prepaid.

Proof of Service

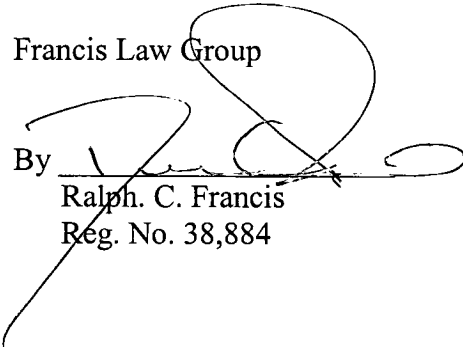
4.) The envelope was addressed as follows:

Wayne B. Cooper  
30 Oakland Avenue  
San Anselmo, CA 94960

Respectfully submitted

Francis Law Group

By



Ralph C. Francis  
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Petitioner hereby appoints

Ralph C. Francis (Reg. No. 38,884)  
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a member of the bar of the State of California, to act as attorneys for Petitioner in the  
above referenced Cancellation Proceeding, with full power to prosecute Petitioner's  
Petition For Cancellation of Reg. No. 3,034,382, filed therein, to transact all relevant  
business with the U.S. Patent and Trademark Office and in the United States Courts and  
to receive all official communications in connection with the above referenced  
Cancellation Proceeding.

Date: 9-5-2008

Petitioner: 

Roman Bratasiuk



**CERTIFICATE OF MAILING**

I hereby certify that the attached Petition For Cancellation is being deposited with the United States Postal Service on this date 06.04.08 in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EM177951113 addressed to the U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451.

RACON FRANCIS  
Name of person mailing document

[Signature]